

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5206 OF 2009

Shri Vishwananth Tukaram Ghorpade. .. Applicant
Vs
State of Maharashtra. .. Respondent
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None for the Applicant.
Dr. F.R. Shaikh, APP for the Respondent No.1.
None appears for the Respondent No.2.
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CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 10TH JUNE 2016

ORAL JUDGMENT: (Per A.S. Oka, J)

1. None appears for the Applicant and the second Respondent. Heard the learned APP for the Respondent No.1 State. We have perused the Application under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The prayer is for quashing the First Information Report (FIR) and all subsequent proceedings on the basis of the said FIR registered by the Miraj City Police Station. The FIR was registered on 30th July 2003 alleging commission of offences under Section 39 and 44 of the Electricity Act, 1910 (for short “the said Act of 1910”). It appears that the learned Judicial Magistrate, First Class, took cognizance of the offence and a charge was framed. An Application was made on 28th June 2007 by the

Applicant/Accused before the learned Magistrate inviting attention of the learned Magistrate to the fact that the said Act of 1910 was repealed by the provisions of the Electricity Act, 2003 (for short “the said Act of 2003”). The said Act of 2003 was brought into force 10th June 2003. It was pointed out to the learned Magistrate that under Section 151 of the said Act of 2003, no Court could take cognizance of the offence under the said Act of 2003 except on a complaint in writing made by the Appropriate Government or Appropriate Commission or any other officer authorised by them or by a Chief Electrical Inspector or an Electrical Inspector or Licensee or the Generating Company. It was pointed out that instead of filing the complaint in the manner provided under Section 151 of the said Act of 2003, the FIR was registered under the Repealed Act. Though the learned Magistrate rejected the Application by the order dated 1st February 2008, the learned Magistrate virtually accepted the submissions made by the Applicant. He expressed helplessness by observing that the remedy of the Applicant is under Section 482 of the CrPC. Hence, this Application.

2. We have perused the statements on the basis of which the FIR was registered. It appears that the officers of the Maharashtra State Electricity Board visited the premises of the Applicant on 30th July 2003. It was found that on seeing the meter, it was tampered with. Therefore,

the offence was registered under Sections 39 and 44 of the said Act of 1910. Infact as on that date, the said Act of 1910 was already repealed. We have perused Section 185 of the said Act of 2003 which is repealing and saving Section. What is protected under the said Section is an action already taken under the said Act of 1910 before the date of commencement of the said Act of 2003. Therefore, registration of the offence under the said Act of 1910 on 30th July 2003, after repeal of the said Act of 1910, was illegal in view of the provisions of Section 151 of the said Act of 2003. Hence, the Application must succeed and we make the Rule absolute in terms of prayer clauses (b) and (c) which read thus:

“(b) that this Hon'ble Court be pleased to issue a writ orders directions u/s 482 of Criminal Procedure Code and be pleased to call for the record and proceedings in respect of the FIR dated 30/7/03 lodged at Miraj City Police Station, at C.R. No.182/09.

(c) that u/s 482 of the Criminal Procedure Code this Hon'ble Court after perusal of the same be pleased to quash and set aside the said FIR dated 30/07/03 lodged at Miraj City Police Station, at C.R No.182/09

& thus further be pleased to quash & set aside the proceedings pending in front of JMFC Miraj vide RCC No.200/03”.

(A.A. SAYED, J)

(A.S. OKA, J)